UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/20/Add.5
15 February 1996

ENGLISH
Original: CHINESE

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1993

Addendum

CHINA*

[2 December 1995]

CONTENTS

		Paragraphs	Page
Introduction		1 - 3	2
I.	NEW MEASURES TAKEN AND PROGRESS MADE IN IMPLEMENTATION OF THE CONVENTION	4 - 63	2
II.	ADDITIONAL INFORMATION AS REQUESTED BY THE COMMITTEE	64 - 95	13

* The initial and the additional reports submitted by the Government of China are contained in documents CAT/C/7/Add.5 and 14, respectively. For their consideration by the Committee, see documents CAT/C/SR.50, 51, 143/Add.2, 144/Add.2, 145/Add.2, 146/Add.2 and Add.4, and Official Records of the General Assembly, forty-fifth and forty-eighth sessions (A/45/44, paras. 471-502 and A/48/44, paras. 387-429).

GE.96-15346 (E)

Introduction

1. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was signed by the People's Republic of China in 1986 and ratified in September 1988. It entered into force in China on 3 November 1988. In December 1989, China submitted its initial report to the Committee against Torture (CAT/C/7/Add.5). This was followed in October 1992 by a supplementary report (CAT/C/7/Add.14). The Committee considered the initial report and the supplementary report on 27 April 1990 and on 22 and 23 April 1993, respectively.

2. The initial and supplementary reports submitted by China described in detail China's political structure, legal framework and statutory and practical prohibitions against torture.

3. This, China's second report, adheres strictly to the guidelines on the form and content of periodic reports, as laid down by the Committee in 1991. The introduction is followed by two parts. Part I reports on the progress made since the initial report in giving effect to the Convention in legislation and in practice; part II, mainly addressing some of the questions raised in the Committee when it considered the previous reports, further elaborates on China's implementation of the Convention.

I. NEW MEASURES TAKEN AND PROGRESS MADE IN IMPLEMENTATION OF THE CONVENTION

Article 2

4. Paragraphs 64-71 of the supplementary report submitted by China continue to apply.

5. Since 1992, China's legislative, administrative and judicial institutions have not ceased to formulate new measures in their respective domains to prevent torture and to protect the physical integrity and democratic rights of citizens against violation.

6. For this purpose, on 29 December 1994 the State promulgated the Prison Law of the People's Republic of China, defining the overall legal rights of prisoners in respect of punishment, prison conditions and educational reform. In May 1994 the State promulgated the State Compensation Law of the People's Republic of China and, on 28 February 1995, the People's Police Law of the People's Republic of China, the Procuratorate Law of the People's Republic of China and the Judge's Law of the People's Republic of China, effectively establishing further legal safeguards against the use of torture.

7. The law deems torture to be a criminal act. There is no circumstance that may ever be invoked to justify its use. Article 33 of the People's Police Law stipulates: "A people's policeman has the right to refuse to carry out any directive that exceeds the mandate of the people's police as defined by laws and regulations and, at the same time, has the right to report such a breach to a higher authority." The purpose of this article is effectively to prevent anyone from citing a superior's order as a pretext for using torture.

Article 3

8. Paragraphs 72 and 73 of the supplementary report submitted by China continue to apply.

Article 4

9. Paragraphs 74-81 of the supplementary report submitted by China continue to apply.

10. In China torture is deemed to be a criminal act. The State, taking an extremely serious view of any incident of torture, has adopted commensurate measures through administrative and judicial means to punish by law anyone guilty of such an act. Various new laws have imposed further explicit injunctions against torture and specified the punishment commensurate to the severity of the crime.

11. The State has adopted legislation prohibiting judicial organs and their personnel from using torture. Thus, article 30 of the Judge's Law stipulates that a judge must not accept bribes; must not practise favouritism to the detriment of the law; must not use torture in interrogation to extort confessions; and must not be derelict of duty, thereby making errors or causing serious damage to any party involved. Any violation of the above shall be subject to administrative discipline or legal prosecution.

12. The People's Police Law imposes strict discipline on the exercise of police authority. Article 22 stipulates that the people's police must not "use torture to extort confessions or to submit prisoners to corporal punishment or mistreatment"; must not "unlawfully deprive or restrict the physical freedom of another; unlawfully search the person, belongings, home or premises of another"; must not "blackmail, extort, seek favours or take bribes"; must not "beat or instigate others to beat people"; and must not "unlawfully impose penalties or exact payments". Any violation of the above shall be subject to administrative discipline or legal prosecution.

13. Article 33 of the Procuratorate Law stipulates that a procurator must not accept bribes; must not practise favouritism to the detriment of the law; must not use torture in interrogation to extort confessions; must not abuse his authority and infringe the lawful rights and interests of citizens and legal persons or other organizations; and must not be derelict of duty, thereby making errors or causing serious damage to any party involved. Any violation of the above shall be subject to administrative discipline or legal prosecution.

14. Since January 1993, the Ministry of Public Security has, in conjunction with the Supreme People's Procuratorate, adopted measures to reinforce their coordination in the investigation of the use of torture in interrogation. Procuratorates and public security organs are required to perform their functions in strict observance of the law and factual evidence. They must act with dispatch, in concert and with mutual support. Once a crime is brought to light, the initiative must be taken promptly to report the case. Whoever is in charge must willingly accept supervision and inspection. There must never be any attempt to cover up, to shirk responsibility or to obstruct justice.

A procuratorate must take every case on its legal merits, and be neither too lenient nor too harsh. Any attempt on its part to incriminate by obtaining a confession through torture is a crime punishable by law. Not only those directly implicated but anyone found derelict of duty or involved in connivance or cover-up, depending on the circumstance and the consequence, shall be open to criminal investigation. Should a person guilty of using torture be privately reprieved or granted immunity, the authority responsible shall be disciplined. There must be no obfuscation. Any police official who seeks favours or takes bribes, or detains without legal justification, shall be dealt with in the same manner.

15. The Prison Law protects the lawful rights of prisoners and explicitly forbids their being tortured under whatever pretext. Article 7 of the Prison Law stipulates: "The personal integrity of prisoners shall not be abused. Their physical security and lawful property and their rights of defence, appeal, accusation, denunciation and other rights that have not been legally taken away or restricted shall not be infringed." Article 6 stipulates: "A people's procuratorate shall legally supervise the acts of a prison enforcing punishment to ensure that these are exercised in accordance with the law." Article 14 stipulates that the people's police of a prison must not "use torture to extort confessions or submit prisoners to corporal punishment or mistreatment"; must not "abuse the personal integrity of prisoners"; must not "beat or allow others to beat prisoners"; that "any of the above acts by the people's police of a prison that constitutes a criminal offence is punishable by law; any such act that falls short of a criminal offence shall be subject to administrative discipline".

16. Besides the explicit prohibitions against torture by law, the Ministry of Justice has also promulgated a series of special regulations, such as the Provisional Scheme to Reward or Penalize Personnel in Judicial and Administrative Systems, thereby applying to acts of beating, abusing or submitting prisoners to corporal punishment or mistreatment specific disciplinary actions that could range from warning, demerit, demotion, transfer or probation all the way to dishonourable discharge. Any behaviour that constitutes an offence against the law shall be subject to criminal investigation.

17. The law requires compensation for any injury or death caused by torture. Thus, article 15 of the State Compensation Law stipulates that where an agency and its personnel engaged in inspection, examination, trial or prison administration have, in the performance of their functions, used torture in interrogation to extort confessions, or resorted to violent behaviour such as beating, or instigated others to use violence such as beating, or unlawfully used firearms or police instruments, thereby causing physical injury or death to any citizen, the victim or a person acting on behalf of the victim has the right to claim compensation.

Article 5

18. Paragraphs 82-84 of the supplementary report submitted by China continue to apply.

Article 6

19. Paragraphs 85-89 of the supplementary report submitted by China continue to apply.

Article 7

20. Paragraphs 90-98 of the supplementary report submitted by China continue to apply.

Article 8

21. Pursuant to the Convention, China will try to include torture as an extraditable offence when it signs an extradition treaty with another country.

22. In 1993, China concluded an extradition treaty with Thailand, article 2 of which stipulates: "For the purpose of this Treaty, an extraditable crime is one which, according to the laws of both signatory parties, is liable to one or more years of imprisonment or other forms of detention or more severe punishment." On the other hand, as defined by articles 3 and 4 of the Treaty, the conditions for which extradition may be refused do not include the crime of torture.

23. The extradition treaties signed in June 1995 between China and the Russian Federation and Belarus, respectively, also contain similar provisions.

24. In law-enforcement practice, any person within the territory of China found to have committed a crime punishable by law will be treated as a criminal by the judiciary. Under appropriate circumstances, the criminal may be extradited to a relevant country for punishment.

Article 9

25. Paragraph 100 of the supplementary report submitted by China continues to apply.

Articles 10 and 11

26. Paragraphs 101-112 of the supplementary report submitted by China continue to apply.

27. Convinced that torture must be banned, the Chinese Government, besides enacting legislation against torture, also commits itself to actual investigation work.

28. According to the relevant provisions of the Criminal Procedure Law of the People's Republic of China, judicial, procuratorial and investigatory personnel must, in accordance with the legally prescribed process, collect various kinds of evidence that can prove the defendant's guilt or innocence and the gravity of his crime. It shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means. Any State functionary who uses torture to extort a confession in order to incriminate shall be subject to legal prosecution.

29. To combat the crime of torture, articles 136, 143, 144 and 189 of the Criminal Law of the People's Republic of China specifically and respectively prohibit the extortion of confession by torture, unlawful detention and corporal punishment of prisoners. At the same time, the Criminal Procedure Laws of the People's Republic of China, Security Administration Regulations of the People's Republic of China on Punishment and Regulations of the People's Republic of China on Arrest and Detention, among others, also contain specific provisions for judicial process against the use of torture.

30. In January 1992, the Ministry of Public Security issued a notice requiring that:

(a) All public security personnel should undergo education on the legal prohibition against torture. This is to eradicate any misconception that the use of torture in interrogation may be commonplace or difficult to avoid;

(b) Anti-torture actions should be conducted among public security personnel and rectification measures should be taken against existing problems;

(c) The supervision of law enforcement should be reinforced; public security disciplinary boards and inspectors should be placed under strict internal supervision so that any case of interrogation by torture can be swiftly exposed and punished; this supervision should be made routine and should be carried out as frequently as possible;

(d) The education and training of police officers should be upgraded so as to ensure higher standards in law enforcement;

(e) Leadership should be strengthened and management should be stricter and more accountable.

Public security leadership at different levels must use anti-torture actions as a means to build up a better police force and raise its consciousness. When it comes to evaluation and promotion, a policeman's attitude on this issue must be taken into account as an important criterion. Any policeman who has used torture in interrogation to solve a case, no matter how valuable his contribution to solving that case, shall not win merit but instead be subject to legal investigation.

31. In order to have timely knowledge of any behaviour of public security and police officers that violates the law or discipline and to handle such a situation, the Ministry of Public Security set up in December 1990 a breach-of-law-and-discipline case reporting system for public security officers, requiring all local security inspectors to adhere to a factual approach. Whenever they come across a case involving the use of torture in interrogation, unlawful detention or violation of the rules on police use of firearms resulting in injury, death or other serious infringement of the physical rights and interests of a citizen, they must immediately file a "report on the violation of law and breach of discipline by a public security officer" and submit it up the chain of command for the attention of the Chief Inspectorate of the Ministry of Public Security.

32. In November 1992, the Ministry of Public Security, in conjunction with the Supreme People's Court and the Supreme People's Procuratorate, published a decree on the lawful and civilized administration of prisoners:

(a) All departments concerned shall further perfect their administrative and inspection systems and put them into operation; the confinement and administration of prisoners shall conform strictly to the Detention Centre Regulations; beating, abuse, corporal punishment and mistreatment of prisoners shall be strictly forbidden; inhumane or degrading incidents shall not be allowed to happen; prisoners shall be administered in a civilized way; inspection shall be reinforced; unlawful behaviour by prison staff shall be conscientiously persecuted and promptly rectified;

(b) During interrogation, trial and sentencing, no prisoner shall be handcuffed, put in leg irons or bound, unless the prisoner is liable to act violently, to escape or to commit suicide, and except where the prisoner is guilty of a capital crime;

(c) No prisoner shall be paraded in public;

(d) The accommodation and sanitary conditions of prisoners shall be improved.

33. Prisons are the mechanisms by which the State enforces the sentences and the punishment as well as effects the reform of criminals. Whatever the motives, no one is allowed to use torture on prisoners. Should the use of torture at any time be found to have occurred, those responsible shall be prosecuted and punished in accordance with the law.

34. The Ministry of Justice attaches high priority to the judicial supervision of prison administration. Prison staff are required to undertake serious study to improve their professional conduct. Torture, humiliation or abuse of prisoners is never to be condoned. For this purpose, the Office of Prisons Administration of the Ministry of Justice issued in March 1993 a Manual on Reform through Labour, in which major United Nations rights instruments - the Universal Declaration of Human Rights, the Standard Minimum Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials and the Convention against Torture - are collected to be carefully studied and put into practice by all prison staff. On 10 September 1991, the Ministry further issued the Code of Conduct for Officials in Charge of Reform and Education through Labour, specifying the proper ethics, comportment and behaviour for prison guards. It lays down certain safeguards for the legitimate rights of inmates and prisoners: "There must be no abuse or corporal punishment; accommodation and sanitation facilities must be properly maintained; provisions must be regular and up to standard; complaints and accusations by inmates and prisoners must be promptly processed according to law; confinement and instruments of security must be carefully applied, governed by strict rules and not abused." In February 1990 and again in December 1992, the Ministry issued notices to all the prisons in the country, insisting that they should reinforce their management effort, particularly to ensure that there is no diversion or embezzlement of the inmates' living stipends and provisions and no deprivation on any pretext of the inmates' rights to basic necessities.

35. On 11 August 1992, the Government of China issued a White Paper entitled The Situation of China's Effort to Reform Criminals, providing a comprehensive and detailed account of the legislative, judicial and administrative measures adopted by China over the years to outlaw torture and to safeguard the rights of criminals. The White Paper elaborates on the introduction of humane prison management; the carrying out of sentences; the reform of criminals through labour; the cultural and vocational training of prisoners; and the employment, resettlement, rehabilitation and protection of former inmates after their release.

36. China relies on different mechanisms to prevent torture from happening. These are:

(a) Social pressure, including supervision by watchdog organizations; public opinion; and monitoring by individuals, including by the families of inmates;

(b) Inspectors permanently placed by the People's Inspectorate in prisons and reform centres to monitor law-enforcement activities; boxes installed in these institutions to receive complaints and accusations; and legal protection of inmates' rights to complain and bring charges;

(c) Disciplinary offices set up inside prisons and reform centres to hear cases about torture and to initiate investigations thereon; and evaluation of the activities of such institutions by authorities, ensuring that any occurrence or absence of abuse, corporal punishment and mistreatment of inmates will figure prominently as a criterion of evaluation;

(d) Impromptu visits by delegations from different levels of people's congresses and political consultative conferences to inspect the conditions of law enforcement in prisons and reform centres.

37. On the question of overseeing the performance of the people's police, the People's Police Law lays down comprehensive provisions, specifically requiring the police to accept supervision as prescribed by the law from the people's procuratorates and from administrative supervisory organs, from its own superiors and from society at large and ordinary citizens.

Article 12

38. Paragraphs 113 and 114 of the supplementary report submitted by China continue to apply.

Article 13

39. Any citizen in China has the right to complain, criticize and bring charges in respect of the transgression of any State functionary against the law, including the act of torture. On pain of censure by the law, a State functionary is not to abuse authority, not to use public office for private indulgence and not to frame or seek vengeance against a complainant, accuser or critic. The law protects the person who complains, makes an accusation or gives testimony from any intimidation or ill-treatment. Anyone who threatens, terrorizes or retaliates against an accuser or witness shall be prosecuted.

40. Article 41 of the Constitution of the People's Republic of China stipulates: "The State organ concerned must deal with complaints, charges or exposures made by citizens in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges or exposures or retaliate against the citizens making them."

41. Article 146 of the Criminal Law stipulates: "Any State functionary who abuses his power, using his public office for private gain, in order to retaliate against or frame complainants, petitioners or critics or incriminate them on false charges shall be sentenced to fixed-term imprisonment of not more then two years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than two years and not more than seven years."

42. Article 46 of the People's Police Law stipulates: "Any citizen or organization has the right to complain or bring charges before an organ of the people's police or a people's procuratorate or an administrative supervisory organ against any behaviour of the people's police that violates the law or discipline. The organ that receives these complaints or charges shall deal with them promptly after ascertaining the facts and inform the accuser or complainant of the results of its deliberations. No one may suppress complaints or charges made in accordance with the law or retaliate against citizens making them."

43. Complaints, accusations and exposures made by prisoners shall benefit from the same safeguards under the law. Thus, article 23 of the Prison Law stipulates: "The information in the complaint, accusation or exposure made by a prisoner must not be suppressed by the prison authority but must be transmitted promptly." Article 47 of the same Law stipulates: "A prisoner may correspond with others while serving his sentence. ... Letters addressed by a prisoner to an organ superior to his prison authority or to a judicial organ must not be inspected." Again, article 21 stipulates: "A complaint from a prisoner shall receive the prompt attention of the people's procuratorate or people's court."

Article 14

44. Paragraphs 117 and 118 of the supplementary report submitted by China continue to apply.

45. Article 41 of the Constitution provides: "Citizens who have suffered losses as a result of infringement of their civic rights by any State organ or functionary have the right to compensation in accordance with the law." Articles 2 and 67 of the Administrative Proceedings Law of the People's Republic of China state that any citizen, legal person or other organization whose legitimate rights and interests are deemed to have been infringed by a specific administrative act of an administrative organ and its personnel has the right to bring charges before a people's court and claim compensation in accordance with the present Law. Article 68 of the Administrative Proceedings Law stipulates that where an administrative organ and its personnel have committed a specific administrative act infringing upon the lawful rights or

interests of a citizen, legal person or other organization, thereby causing damage, that administrative organ shall be liable to provide compensation in accordance with the law.

46. Article 50 of the People's Police Law stipulates: "Where the people's police, in the performance of its functions, infringes upon the lawful rights and interests of a citizen or organization, it shall provide compensation in accordance with the State Compensation Law and other relevant laws and regulations."

47. Article 42 of the Public Security Administration Regulations on Punishment also stipulates: "Any public security organ which, in the administration of security, has punished a citizen by mistake shall admit its error to the victim, remit any penalty imposed, return any confiscated property and, where the citizen's legitimate rights and interests have been infringed, provide compensation for any damage caused."

48. The State Compensation Law promulgated on 12 May 1994 has comprehensively defined the limits of administrative and criminal compensation, the claimant and the organ liable, and questions such as the procedure and form of compensation and standards for computing it.

49. Article 2 of the State Compensation Law stipulates: "Where a State organ and its personnel have acted unlawfully in the performance of their functions and infringed the legitimate rights and interests of a citizen, legal person or organization, thereby causing damage, the victim has the right to claim compensation from the State."

50. On the question of administrative compensation, article 3 of the State Compensation Law stipulates that where an administrative organ and its personnel have in the performance of their administrative functions infringed a person's physical rights in one of the following ways, the victim has the right to claim compensation:

(a) Unlawfully detaining a citizen or unlawfully taking compulsory administrative measures to restrict the physical freedom of a citizen;

(b) Unlawfully imprisoning a citizen or otherwise depriving a citizen of his physical freedom;

(c) Committing or instigating others to commit a violent act such as beating, thereby causing bodily injury or death to a citizen;

(d) Unlawfully using firearms or police instruments to cause bodily injury or death to a citizen;

(e) Committing other unlawful acts causing bodily injury or death to a citizen.

Article 6 of the Law stipulates: "The victimized citizen and legal person or other organization has the right to claim compensation."

51. On the question of criminal compensation, article 15 of the State Compensation Law stipulates that where an organ and its personnel engaged in investigation, examination, trial or prison administration have in the performance of their functions infringed a person's physical rights in one of the following ways, the victim has the right to claim compensation:

(a) Wrongfully detaining a person without proof of his having committed a crime or without evidence leading to serious suspicion of his having committed a crime;

(b) Wrongfully arresting a person without proof of his having committed a crime;

(c) An original sentence having been carried out, a second trial ordered under judicial supervision process then pronouncing the accused to have been innocent;

(d) Extorting a confession by torture or committing or instigating others to commit a violent act such as beating, thereby causing bodily injury or death to a citizen;

(e) Unlawfully using firearms or police instruments to cause bodily injury or death to a citizen.

52. Article 16 of the Law stipulates that, the victim has the right to claim compensation where an organ and its personnel engaged in investigation, examination, trial or prison administration have in the performance of their functions infringed a person's property rights in one of the following ways:

(a) Unlawfully taking measures to seal, hold, freeze or confiscate property;

(b) An imposition of fine or confiscation having been carried out, a second trial ordered under judicial supervision process then pronouncing the accused to have been innocent.

53. According to the provisions of article 25 of the State Compensation Law, compensation by the State shall mainly take the form of financial repayment. Where restitution is possible, any property taken shall be returned or restituted. Where the victim has died from torture, the heir or other foster relations shall have the right to compensation. Article 23 (c) of the State Compensation Law stipulates that, where the right to life and health of a citizen has been violated, resulting in the death of the victim, compensation shall be paid for the person's death and burial, as well as a living allowance for anyone with no capacity to work who was formerly dependent on the dead person.

54. To ensure that a torture victim is compensated, article 23 (3) of the State Compensation Law stipulates: "A decision to award compensation made by the Commission on Compensation is viable before the law and shall be enforced." The right of a torture victim to compensation is therefore fully guaranteed by the law.

Article 15

55. Paragraphs 120-122 of the supplementary report submitted by China continue to apply.

56. On 21 March 1994, the Supreme People's Court published the Special Rules on the Procedure for Handling Criminal Cases. Article 45 of these Rules stipulates: "It is prohibited to collect evidence by unlawful means. Any testimony by a witness, declaration by a victim or confession by an accused that has been obtained by unlawful means such as interrogation by torture or threat, enticement or deceit cannot be admitted as evidence."

Article 16

57. Paragraphs 123-129 of the supplementary report submitted by China continue to apply.

58. China has passed legislation to prevent any civil servant or person performing an official function from exercising, instigating, consenting to or acquiescing in acts of treatment or of punishment that are cruel, inhuman or degrading.

59. Article 14 of the Prison Law stipulates that people's police in a prison must not "use torture to extort confessions from prisoners or submit prisoners to corporal punishment or mistreatment"; must not "abuse the integrity of prisoners"; and must not "beat or allow others to beat prisoners".

60. Article 22 of the People's Police Law stipulates that people's police must not "use torture to extort confessions or to subject prisoners to corporal punishment or mistreatment"; must not "unlawfully deprive or restrict the physical freedom of another; unlawfully search the person, belongings, home or premises of another"; and must not "beat or instigate others to beat people".

61. Article 33 of the Procuratorate Law stipulates that a prosecutor must not use torture in interrogation to extort confessions; must not abuse his authority and infringe the lawful rights and interests of citizens and legal persons and other organizations.

62. Article 30 of the Judge's Law stipulates that a judge must not use torture in interrogation to extort confessions.

63. Article 41 of the Security Administration Regulations on Punishment stipulates: "In implementing these regulations, public security personnel shall strictly follow the law and obey discipline. They shall be just in enforcing the law, not given to favouritism or fraudulence. It is forbidden to beat, abuse, mistreat or humiliate security violators. Violation of these Regulations shall be subject to administrative discipline; violation that constitutes a criminal offence is punishable by law."

II. ADDITIONAL INFORMATION AS REQUESTED BY THE COMMITTEE

Precautions regarding the use of preventive detention

64. Criminal detention is a coercive measure which, under China's Criminal Procedure Law, can legitimately be used by a public security organ in an emergency situation to restrict the physical freedom of an active criminal or major suspect. Article 3 (1) of the Criminal Procedure Law stipulates: "The public security organs shall be responsible for investigation, detention and preliminary examination in criminal cases." China's Criminal Procedure Law and Regulations on Arrest and Detention both contain explicit provisions on the use of criminal detention.

65. Article 41 of the Criminal Procedure Law stipulates that a public security organ may initially detain an active criminal deserving arrest or a major suspect under any of the following conditions:

(a) If he is preparing to commit, is in the process of committing or is discovered immediately after committing a crime;

(b) If he is identified as having committed a crime by a victim or eyewitness;

(c) If criminal evidence is found on his body or at his residence;

(d) If he attempts to commit suicide or to escape after committing the crime, or if he is a fugitive;

(e) If there is a likelihood of his destroying or falsifying evidence or colluding with others to give false statements;

(f) If his identity is unknown and he is strongly suspected of being an itinerant criminal;

(g) If he is engaged in "beating, smashing and looting" and is seriously undermining work, production and public order.

66. Article 43 of the Criminal Procedure Law stipulates that, when detaining a person, a public security organ must produce an arrest warrant. Within 24 hours after a person has been detained, his family or the unit to which he belongs shall be notified of the reasons for detention and the place of custody, except where such notification would hinder the investigation or there is no way of making such notification.

67. Article 44 of the Criminal Procedure Law stipulates that a public security organ shall interrogate a detainee within 24 hours after detention. If it is found that the person should not have been detained, he must be immediately released and issued with a certificate of discharge. If the public security organ finds it necessary to arrest a detainee when sufficient evidence is still lacking, it may allow the detainee to obtain a guarantor pending trial or place him under residential surveillance.

68. Article 48 of the Criminal Procedure Law stipulates that, if a public security organ deems it necessary to arrest a detainee, it shall, within three days after the detention, submit a request to the people's procuratorate for examination and approval. Under special circumstances, the time-limit for submitting the request may be extended by one to four days. The people's procuratorate shall decide either to approve or disapprove the arrest within three days after receiving the request for approval of arrest from a public security organ. If the people's procuratorate fails to approve the arrest, the public security organ shall, upon receiving notification of the decision, immediately release the detainee and issue him with a discharge certificate. If the public security organ or the people's procuratorate fails to act in accordance with the above provisions, the detainee and his family shall have the right to demand his release, and the public security organ or the people's procuratorate shall immediately release him.

Investigations undertaken on torture cases, especially on torture cases occurring in Tibet, as cited by non-governmental organizations

69. The material on torture cases received by China from NGOs generally divides into two categories. The first category consists of communications from NGOs transmitted by the United Nations Centre for Human Rights and the Special Rapporteur on the question of torture of the United Nations Commission on Human Rights. A considerable portion of these have to do with the Tibet Autonomous Region in China. The second category consists of complaints or information submitted by victims and forwarded by Chinese NGOs on their behalf directly to judicial, law-enforcement or administrative departments. With regard to the first category, the Chinese Government mostly assigns the Office of Law and Discipline of the Supreme People's Procuratorate to undertake investigations. Sometimes the Government also keeps watch on a situation by using other channels, so as to verify the results of an investigation. At the appropriate time, relevant United Nations organizations are notified of the results. Investigations on the second category of communications are mostly carried out by the offices handling letters and visits by the departments to which the complaints are addressed. The task may also be entrusted to special investigators. A number of these communications have helped to clear up cases of violations of law and discipline by State functionaries.

Administrative detention

70. Administrative detention, as defined by Chinese law, is a kind of administrative punishment covering behaviour which violates the Security Administration Regulations on Punishment. The Regulations lay down strict provisions on duration of such administrative detention, to whom it may be applied, and how it is to be decided and enforced.

71. Articles 19, 20, 22-24, 26, 27 and 30-32 of the Security Administration Regulations on Punishment relate to the different conditions under which such detention may be effected. Where the violation of a regulation is of a relatively serious nature but nevertheless does not constitute a criminal offence punishable by law, detention of over 1 and less than 15 days may be applicable.

Assurance of an early meeting between a detainee and his family, lawyer and doctor

72. Article 48 of the Prison Law stipulates: "A prisoner serving a sentence may, according to the provision, meet with his relative or guardian."

73. Article 28 of the Detention Centre Regulations stipulates: "An inmate under custody may, with the consent of the organ in charge of his case and the approval of a public security organ, correspond and meet with a close relative." Article 32 stipulates: "Where the people's procuratorate has decided to bring charges, a detainee under custody may, upon receiving a copy of his indictment, meet and correspond with the defence counsel appointed by himself or by the people's tribunal."

Assurance of a medical examination for a person under arrest

74. Article 17 of the Prison Law stipulates: "A prison shall give a prisoner being handed over to serve his sentence a physical examination." Article 53 stipulates: "Accommodation for prisoners shall be sturdy, well-ventilated, well-lit, clean and warm." Article 54 stipulates: "A prison shall be equipped with a medical installation as well as facilities for daily health care. It shall establish a system for the inmates' living and sanitation facilities. The medical care of inmates shall be integrated into the local health and epidemic prevention scheme for the neighbourhood of the prison."

75. Article 26 of the Detention Centre Regulations stipulates: "A detention centre shall be equipped with the necessary medical instruments and common pharmaceutical products. An inmate falling ill shall be given timely care; one in need of hospitalization shall be given prompt treatment by the local hospital; one whose illness is serious may be released on bail pending trial, in accordance with the law."

76. Decree 16, Living and Health Administration Scheme for Persons Undergoing Re-education through Labour, issued by the Ministry of Justice on 12 August 1991, laid down 31 requirements for reform centres in terms of medical staff, medical facilities, daily health care, living quarters, sanitation and physical condition of inmates.

Appropriate supervision and inspection of procedures for investigation, interrogation, administrative detention and detention for questioning

77. It is stipulated in both article 135 of the Constitution and article 5 of the Criminal Procedure Law that, in conducting criminal proceedings, the people's courts, the people's procuratorates and the people's security organs shall divide responsibilities, coordinate their efforts and monitor each other to ensure the correct and effective enforcement of the law. Again, article 96 of the Criminal Procedure Law stipulates: "In examining a case, a people's procuratorate shall ascertain whether the investigation of the case is being lawfully conducted." Article 52 stipulates: "If in the process of examining and approving arrests, a people's procuratorate discovers illegalities in the investigatory activities of the public security organ, it shall inform the

public security organ of the need to make corrections, and the public security organ shall notify the people's procuratorate of what corrections have been made."

78. In 1987 the Ministry of Public Security proclaimed the Rules on the Procedure of Handling Criminal Cases by Public Security Organs, article 3 (1) of which stipulates: "In conducting criminal proceedings, the public security organs must rely on the masses, base themselves on facts and take the law as the criterion. They must collect evidence in accordance with the procedures and requirements defined by the law. Extorting a confession by torture is strictly prohibited." Article 8 (1) stipulates that once a public security organ has, in its criminal proceedings, "received notice about illegalities in any investigatory activity, it shall take action to correct them and promptly notify the people's procuratorate of the situation".

79. The People's Police Law has a special chapter on the "supervision of law enforcement", which specifically requires the people's police, besides accepting supervision of the performance of its functions by the people's procuratorates and administrative supervisory organs, also consciously to accept supervision by society at large and by citizens. A superior organ of the people's police shall supervise the law-enforcement activities of its subordinate organs. Any citizen or organization has the right to complain or bring charges before an organ of the people's police or people's procuratorate or an administrative supervisory organ against any behaviour of the people's police that violates the law or discipline. Article 47 of the People's Police Law stipulates: "A public security organ shall establish a system of inspection to supervise the people's police as it enforces the laws and regulations and obeys discipline." On 11 May 1995 the Ministry of Public Security promulgated the Provisional Rules on the Handling of Charges and Complaints by Public Security Organs, defining the scope and procedures by which public security organs shall handle charges and complaints brought by citizens, legal persons and other organizations in accordance with the law against illegality and delinquency by public security organs and the people's police.

80. With regard to supervision of administrative detention, any citizen appealing against punishment by administrative detention may, according to Chinese law, ask for a review by an administrative organ or initiate administrative proceedings before a people's tribunal. Article 9 of the Administrative Review Regulations of the People's Republic stipulates that any citizen and legal person or other organization appealing against an administrative punishment, e.g. detention, fine, revocation of permit and licence, order for stoppage or closure or confiscation of property, may ask for a review by an administrative organ. Article 11 of the Administrative Proceedings Law stipulates that the litigation brought by a citizen, legal person and other organization against an administrative punishment such as detention, fine, revocation of permit and licence, order for stoppage or closure or confiscation of property shall be heard by a people's tribunal. Article 39 of the Security Administration Regulations on Punishment stipulates: "Any person ordered to submit to security administrative punishment or any person suffering from infringement who wishes to appeal against the ruling of a public security organ or the people's government of a township or rural administration may, within five days of receiving

notification, do so to a public security organ of a superior level. The superior organ shall then, within five days of receiving the appeal, make a new ruling. If the same person wishes to appeal against the new ruling, he may, within five days of receiving notification, initiate litigation before a local people's tribunal."

81. Detention for questioning is a compulsory measure of examination used by a public security organ pursuant to relevant regulations of the State Council against a person with a certified criminal record and dubious origin who conceals his true name and address or who is suspected of itinerant criminality or of habitual offences or of gang activity and therefore warrants detention for questioning. In its implementation, such a measure follows a strictly prescribed procedure under the supervision of a people's procuratorate. Chinese law and regulations provide that anyone appealing against his detention for questioning may ask for a review by a public security organ of a superior level or take administrative action before a people's tribunal.

82. On 31 March 1990, the Supreme People's Court issued the Provisional Regulations on Supervision by a People's Court, defining the role, powers and methods and process of control of supervisory mechanisms to be set up within people's courts. In this way it is hoped to impose stronger supervision on the policies of State judicial organs, to tighten their discipline, to ensure the probity of the courts and their staff, and scrupulously to enforce the law and exercise State judicial power.

Adoption of legislation to ensure that witnesses are not harmed or intimidated and to assure the right of detainees to lodge complaints

83. The State passes legislation to give greater protection to witnesses. Article 146 of the Criminal Law stipulates: "Any State functionary who abuses his power, using his public office for private gain, in order to retaliate against or frame complainants, petitioners or critics or incriminate them on false charges" shall receive commensurate punishment. Article 32 of the Criminal Procedure Law stipulates that when judicial, procuratorial and investigatory personnel collect evidence, they must do so according to the legally prescribed process. "It shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means. Conditions must be guaranteed for all citizens who are involved in a case or who have information about the circumstances of a case to objectively and fully furnish evidence." Article 46 of the Police Law stipulates: "Any citizen or organization has the right to complain or bring charges before an organ of the people's police or a people's procuratorate or an administrative supervisory organ against any behaviour of the people's police that violates the law or discipline. The organ that receives these complaints or charges shall deal with them promptly after ascertaining the facts and inform the accuser or complainant of the results of its deliberations. No one may suppress complaints or charges made in accordance with the law or retaliate against citizens making them."

84. Treaties of judicial assistance and extradition treaties signed between China and many other countries contain special provisions to protect witnesses from retaliation or harm and to guarantee the conditions under which they may

give testimony and the rights they may enjoy. For example, it will be stipulated that a treaty signatory may not punish or use force or threat of force in respect of anyone who refuses to give testimony or provide verification in its territory in accordance with the provisions of the treaty. Irrespective of his nationality, a witness summoned to appear before a particular judicial organ may not be asked to answer for any criminal act committed before his entry into the territory, or take criminal responsibility for his testimony, or be arrested, or in any way be deprived of his freedom.

85. In other domains the State has further elaborated ways to protect witnesses. Thus, article 59 of the Rules on the Procedure for Handling Criminal Cases by Public Security Organs stipulates: "Conditions must be guaranteed for all citizens who are involved in a case or who have information about the circumstances of a case to objectively and fully furnish evidence." The Supreme People's Court and the Supreme People's Procuratorate have also, according to the circumstances in this domain, made specific provisions to protect witnesses.

86. The State has also adopted a series of legislative measures to safeguard the legal rights of detainees. Article 23 of the Prison Law stipulates: "The information in the complaint, accusation or exposure made by a prisoner must not be suppressed by the prison authority but must be transmitted promptly." Article 21 stipulates: "The complaint of a prisoner shall receive the prompt attention of the people's procuratorate or the people's court." Article 46 of the Detention Centre Regulations stipulates: "The appeal and complaint of an inmate must not be suppressed by the detention centre authority but must be transmitted promptly." And again: "The information in the exposure and accusation made by an inmate against illegalities by law-enforcement personnel shall be submitted promptly for the attention of the people's procuratorate."

Adoption of legislation and specific procedure to ensure that any directive from a superior will not serve as a pretext for using torture

87. Article 33 of the People's Police Law stipulates: "A people's policeman has the right to refuse to carry out any directive that exceeds the mandate of the people's police as defined by laws and regulations and, at the same time, has the right to report such a breach to a higher authority." This provision can effectively prevent a superior's order from being cited as a pretext for using torture.

General legal education for military, law-enforcement and medical personnel, especially on the need for rules to limit the use of weapons

88. China's judicial and administrative organs set high store by general legal education. The Ministry of Justice emphasizes the training of prison and reform centre administrative personnel to ensure better-quality law enforcement. At the core is training for all custodial staff on the strict injunctions against torturing, humiliating, beating, abusing and mistreating prisoners and inmates.

89. In June 1992, the Ministry of Justice introduced the 1992-1995 Nationwide Training Scheme for Cadres of the Judicial and Administrative Systems. China's penal system has undertaken to train its custodial staff using the

Scheme as a basis. It has built up a training network of three levels from the centre to the grass roots. For this purpose the Ministry of Justice has established the Central Academy for Judicial Police Officers and the criminal justice special curricula at the Southwest University of Politics and Law and the Northwest University of Politics and Law. In addition, there are 31 judicial police institutes and 370 permanent training courses for prison staff set up in the provinces. A network constructed on three different levels - under the Ministry of Justice, under the provincial penal administrations and inside the prisons themselves - groups custodial staff of the Chinese penal system into classes to receive training on such subjects as theory, law, professional skill and United Nations instruments against torture. Only those who become qualified can be given a post assignment.

90. In 1994, the penal system organized throughout the nation 2,092 training classes of various kinds for custodial staff; altogether there were 177,353 enrolments, an increase of 16,950 enrolments over 1993.

91. The People's Police Law contains explicit provisions on the use of weapons and police instruments. Article 10 stipulates: "Under emergency situations such as resisting arrest, riot, prison escape, seizure of firearms or other acts of violence, the people's police of a public security organ may use weapons in accordance with relevant regulations of the State." Article 11 stipulates: "Out of necessity to restrain an act that seriously violates the law, the people's police of a public security organ may use police instruments in accordance with relevant regulations of the State." Against any violations of these provisions, article 49 of the above Law stipulates: "The use of weapons or police instruments by the people's police in violation of regulations that constitute a criminal offence is punishable by law; any such act that falls short of a criminal offence shall be subject to administrative discipline."

92. The Prison Law contains restrictive provisions on the use of ordnance and weapons. Article 45 stipulates that prison authorities may use ordnance where preventive measures are necessary because a criminal is liable to escape or use violence or is travelling under guard or is otherwise dangerous. However, once any of the above conditions is no longer valid, prison authorities shall cease using ordnance. Again, article 46 stipulates that the people's police and the people's armed police guards may use weapons in accordance with State regulations only when criminals are gathering in a mob to riot, or when a criminal is escaping, or resisting arrest, or committing violence or destruction with a lethal weapon or other dangerous object, thereby threatening the lives, property or security of others, or engaging in robbery, or seizing a weapon, when no prevention is possible without the use of weapons.

Cases where forceful measures were taken to prevent torture and punish culprits

93. China's public security organs have taken some forceful measures to prevent torture. They have taken measures to educate the people's police on the rule of law and regard for the masses, thereby to raise its legal consciousness and to encourage it conscientiously to serve the people, strictly to enforce the laws, regulations and rules of the State and to

prevent incidents of torture from happening. They have taken practical reform measures to rectify existing problems, concentrating on the problem of interrogation by torture to extort confessions. They have reinforced supervision, imposing severe punishment in cases of interrogation by torture. Not only are culprits punished in accordance with the Criminal Law, but the superiors concerned are personally liable.

94. Both operational and supervisory departments are involved. They work in coordination, tackling both the incidental and the causal aspects, establishing a rule-governed context against torture and building up the mechanisms of supervision and restraint.

95. At the same time, practical steps are taken to punish whomever is responsible for the use of torture. Exemplary case: On 22 July 1994, the assistant director of the public security bureau and chief of police command of the city of Changzhi, Shanxi province, Yu Liehai, and two police officers from the 2nd Squad, Yu Luhai and Yan Deming, used false testimony obtained from a third party under torture to interrogate a middle school teacher, Shen Fengqi. Their attempt to extract a confession by torture led to the victim's death. Tried by the intermediate people's court of Changzhi for causing injury, Yu Liehai was given the death sentence and deprived of political rights for life; Yu Luhai was sentenced to life imprisonment and deprived of political rights for life; Yan Deming was sentenced to 10 years' imprisonment; He Tukuan, the director of the public security bureau who should bear direct responsibility, was sentenced to five years' imprisonment.